RHB Trustees Bhd (suing as trustees of the Linggiu Valley Orang Asli (Jakuns) Trust) v Folks Corporate Services Sdn Bhd & Anor

HIGH COURT (KUALA LUMPUR) — CIVIL SUIT NO WA-22NCvC-174–03 OF 2024
ROZ MAWAR J
20 JANUARY 2025

Legal Profession — Disqualification — Conflict of interest — Counsels and law firms — Application by plaintiff to recuse and/or disqualify counsels from acting for defendants — Trust related dispute — Whether there was an issue of conflict of interest — Whether law firms were recipients of trust monies which formed subject matter of suit — Whether there was clear pecuniary interest in outcome of case — Whether counsels were potential witness to suit — Whether there was involvement of counsels in previous related proceedings — Whether professional independence of counsels questionable — Whether there was potential suppression of evidence — Whether there was violation of Legal Profession (Practice and Etiquette) Rules 1978

This was the plaintiff's application in encl 41 seeking to disqualify two law firms and also the respective counsels on records for the defendants. The solicitors and counsels were Prakash Menon of Messrs Isharidah Ho Chong & Menon ('IHCM') and Renu Zechariah of Messrs Rosley Zechariah. The application arose in the context of a larger dispute involving the plaintiff acting as trustee of the Linggiu Valley Orang Asli (Jakuns) Trust ('trust') and the second defendant was the former receiver and manager ('R&M') of the trust. The first defendant was the corporate vehicle through which the second defendant performed his R&M duties. The second defendant's court ordered appointment as R&M of the trust came to an end when the court ordered the plaintiff to take over as trustee. The key salient facts relied upon by the plaintiff for recusal of the law firms and counsels were that: (a) wrongful trust fund payments were made by the defendants to the two law firms; (b) there was an issue of conflict of interest as both law firms were recipients of the trust monies which form the subject matter of this suit, therefore, there was a clear pecuniary interest in the outcome of the case; (c) there were witness issues as counsels Prakash Menon and Renu Zechariah were potential material witnesses; (d) there was previous involvement as the lawyers had been involved in previous related proceedings about these trust matters, creating an issue of professional independence and potential evidence suppression; and (e) there were violation of professional rules, namely rr 27 & 28 of the Legal Profession (Practice and Etiquette) Rules 1978 ('the Rules').

Held, allowing the application:

(1) Both counsels attested in their arguments that the two law firms were the recipients of the disputed trust payments. Thus, they clearly stand to be directly affected by the outcome of these proceedings. Their interests align with defending the very payments under challenge. The lawyers' (both the two law firms and also the counsels) pecuniary interest was not merely speculative but direct and substantial. Accordingly, r 27 of the Rules specifically prohibited an advocate and solicitor from appearing in any matter where they had a direct pecuniary interest (see paras 10–11 & 14).

(2) The strength of the case was evident by the fact that: (a) both law firms were direct recipients of the disputed trust payments; (b) the payments form a central part of the claim; (c) the firms' entitlement to these fees and the reasonableness of their quantum were disputed and were triable issues in this case; and (d) the potential liability for return of these payments created a clear pecuniary interest. Hence, the outcome of this case had direct bearing on the pecuniary interests of the two law firms and in turn the two counsels, accumulatively creating a clear pecuniary interest under r 27 of the Rules (see para 15).

(3) The lawyers would inevitably be material witnesses regarding the disputed payments and their evidence would be essential to determine whether the payments were proper and justified. The dual role as advocates (for the two counsels) and solicitors (for the two law firms) and witnesses would compromise the integrity of the proceedings. Additionally, on the issue of the defendants' arguments that they were entitled to appoint lawyers of their choice in these proceedings was an absolute right, the right to counsel was not absolute and must give way in appropriate situations and circumstances. It could not override the principles of fairness and justice. It could not take precedence over the broader interests of the administration of justice (see paras 17 & 26).

(4) Rule 28 of the Rules prohibited lawyers from acting where they may be witnesses on material facts. The dual roles as advocates and potential witnesses would not serve the administration of justice. This point went hand in hand with the professional independence that they must accord not to just their clients who were both the defendants, but also to this court. The questions of the lawyers' professional independence were apparent as they must defend their own fee arrangements and professional conduct. They would be required to justify payments made to themselves. These created an untenable position where their personal interests were directly implicated. Hence, the requirement for professional independence under rr 4 and 5 of the Rules could not be maintained (see paras 19–21).

(5) The proper administration of justice required that these proceedings be conducted by counsel who could maintain complete professional independence and objectivity. Hence, this was a sufficiently strong case to warrant the disqualification of both law firms and both the counsels. Accordingly, the plaintiff's application for recusal of the lawyers ('ICHM and RZ, Prakash Menon and Renu Zechariah') from acting for the defendants in these proceedings, was allowed (see paras 30–31).

[Bahasa Malaysia summary

Ini adalah permohonan plaintif dalam lampiran 41 memohon untuk membatalkan kelayakan dua firma guaman dan juga peguam masing-masing yang mewakili defendan. Peguamcara tersebut adalah Prakash Menon dari Tetuan Isharidah Ho Chong & Menon ('IHCM') dan Renu Zachariah dari Tetuan Rosley Zechariah ('RZ'). Permohonan itu timbul dalam konteks pertikaian yang lebih besar melibatkan plaintif yang bertindak sebagai pemegang amanah Orang Asli (Jakuns) Lembah Linggiu ('amanah') dan defendan kedua adalah bekas penerima dan pengurus ('R&M') amanah tersebut. Defendan pertama adalah kenderaan korporat yang mana defendan kedua melaksanakan tugas R&Mnya. Perintah mahkamah defendan kedua mengarahkan pelantikan sebagai R&M amanah ditamatkan apabila mahkamah mengarahkan plaintif mengambil alih sebagai pemegang amanah. Fakta penting utama yang diguna pakai oleh plaintif untuk menolak firma guaman dan peguam adalah bahawa: (a) pembayaran dana amanah yang salah telah dibuat oleh defendan kepada dua firma guaman; (b) terdapat isu percanggahan kepentingan kerana kedua-dua firma guaman adalah penerima wang amanah yang menjadi perkara pokok saman ini, oleh itu, terdapat kepentingan kewangan yang jelas dalam keputusan kes itu; (c) terdapat isu saksi kerana peguam Prakash Menon dan Renu Zachariah adalah saksi material yang berpotensi; (d) terdapat penglibatan sebelum ini kerana peguam telah terlibat dalam prosiding berkaitan sebelum ini mengenai perkara amanah ini, mewujudkan isu kebebasan profesional dan potensi penyembunyian keterangan; dan (e) terdapat pelanggaran kaedah profesional, iaitu k 27 dan 28 Kaedah-Kaedah Profesion Undang-Undang (Amalan dan Etika) 1978 ('Kaedah-Kaedah').

Diputuskan, membenarkan permohonan:

(1) Kedua-dua peguam itu mengesahkan dalam hujah mereka bahawa kedua-dua firma guaman itu adalah penerima bayaran amanah yang dipertikaikan. Oleh itu, mereka jelas akan terjejas secara langsung oleh keputusan prosiding ini. Kepentingan mereka sejajar dengan mempertahankan pembayaran yang dicabar. Kepentingan kewangan peguam (kedua-dua firma guaman dan juga peguam) bukan sekadar spekulatif tetapi langsung dan besar. Sehubungan itu, k 27 Kaedah-Kaedah secara khusus melarang peguambela dan peguamcara

daripada hadir dalam mana-mana perkara di mana mereka mempunyai kepentingan kewangan secara langsung (lihat perenggan 10–11 & 14).

(2) Kekuatan kes itu terbukti dengan fakta bahawa: (a) kedua-dua firma guaman adalah penerima langsung bayaran amanah yang dipertikaikan; (b) pembayaran membentuk bahagian utama tuntutan; (c) kelayakan firma terhadap fi ini dan kewajaran kuantumnya telah dipertikaikan dan merupakan isu yang boleh dibicarakan dalam kes ini; dan (d) potensi liabiliti untuk pemulangan pembayaran ini mewujudkan kepentingan kewangan yang jelas. Oleh itu, keputusan kes ini mempunyai kaitan langsung dengan kepentingan kewangan kedua-dua firma guaman dan seterusnya kedua-dua peguam, secara terkumpul mewujudkan kepentingan kewangan yang jelas di bawah k 27 Kaedah-Kaedah (lihat perenggan 15).

(3) Peguam-peguam akan menjadi saksi material mengenai pembayaran yang dipertikaikan dan keterangan mereka adalah penting untuk menentukan sama ada pembayaran itu wajar dan terdapat justifikasi. Peranan dua sebagai peguambela (untuk dua peguam) dan peguamcara (untuk dua firma guaman) dan saksi akan menjejaskan integriti prosiding. Selain itu, dalam isu hujah defendan bahawa mereka berhak melantik peguam pilihan mereka dalam prosiding ini adalah hak mutlak, hak untuk mendapatkan peguam bukanlah mutlak dan mesti memberi laluan dalam situasi dan keadaan yang sesuai. Ia tidak dapat mengatasi prinsip ketelusan dan keadilan. Ia tidak boleh diutamakan daripada kepentingan pentadbiran keadilan yang lebih luas (lihat perenggan 17 & 26).

(4) Kaedah 28 Kaedah-Kaedah melarang peguam daripada bertindak di mana mereka boleh menjadi saksi atas fakta material. Peranan berganda sebagai peguambela dan saksi yang berpotensi tidak elok untuk pentadbiran keadilan. Perkara ini seiring dengan kebebasan profesional yang mereka mesti berikan bukan sahaja kepada anak guam mereka yang merupakan defendan, tetapi juga kepada mahkamah ini. Persoalan mengenai kebebasan profesional peguam adalah jelas kerana mereka mesti mempertahankan aturan fi bayaran dan kelakuan profesional mereka sendiri. Mereka akan dikehendaki untuk mewajarkan pembayaran yang dibuat kepada diri mereka sendiri. Ini mewujudkan kedudukan yang tidak boleh dipertahankan di mana kepentingan peribadi mereka dikaitkan secara langsung. Oleh itu, keperluan untuk kebebasan profesional di bawah rr 4 dan 5 Kaedah-Kaedah tidak dapat dipertahankan (lihat perenggan 19–21).

(5) Pentadbiran keadilan yang sepatutnya memerlukan prosiding ini dijalankan oleh peguam yang boleh mengekalkan kebebasan profesional dan objektiviti sepenuhnya. Oleh itu, ini adalah kes yang cukup kukuh untuk menjamin kehilangan kelayakan kedua-dua firma guaman dan

kedua-dua peguam. Sehubungan itu, permohonan plaintif untuk menarik balik peguam ('ICHM dan RZ, Prakash Menon dan Renu Zechariah') daripada bertindak bagi defendan dalam prosiding ini, dibenarkan (lihat perenggan 30–31).]

Cases referred to

Black v Taylor [1993] 3 NZLR 403, CA (folld)
Dato' Sri Mohd Najib bin Hj Abd Razak v PP and other appeals (No 4) [2022] 5 MLJ 159, FC (refd)
Mirza Mohamed Tariq Beg bin Mirza HH Beg v Margaret Low Saw Lui & Ors [2009] 4 MLJ 671; [2009] 4 CLJ 303, CA (folld)
Ng Yee Hong v Malaysian Institute of Accountants [2021] 1 MLJ 584, CA (folld)
Quah Poh Keat & Ors v Ranjit Singh a/l Taram Singh [2009] 4 MLJ 293; [2009] 4 CLJ 316, CA (refd)
Vijayalakshmi Devi Nadchatiram v Saraswathy Devi Nadchatiram [2000] MLJU 838; [2000] 4 CLJ 870, FC (refd)
Wong Sin Chong & Anor v Bhagwan Singh & Anor [1993] 3 MLJ 679; [1993] 4 CLJ 345, FC (refd)

Legislation referred to

Legal Profession (Practice and Etiquette) Rules 1978 rr 2, 3, 4, 5, 27, 27(a), 28

Gopal Sreenevasan (with Michelle Chew and Ramjahentherau a/l Venketesan) (V Ram & Assoc) for the plaintiff.
Prakash a/l KVP Menon (with Vinoshi Saminathan) (Isharidah Ho Chong & Menon) for the first defendant.
Renu Zechariah (with Cheryl Kwan Chui Yi) (Rosley Zechariah) for the second defendant.

Roz Mawar J:

[1] The delicate balance between a litigant's right to counsel of choice and the paramount need to maintain the integrity of the administration of justice lies at the heart of this application. What makes this case particularly compelling is that the very lawyers whose recusal is sought are inextricably woven into the fabric of the underlying dispute, being recipients of the allegedly wrongful payments that form the subject matter of this suit. This unique circumstance brings into sharp focus the fundamental principles governing lawyer recusal and the court's role as guardian of the proper administration of justice.

THE RECUSAL APPLICATION

[2] Before me is the plaintiff's application in encl 41 seeking to disqualify two law firms and also the respective counsels on records for the defendants, namely: (a) Messrs Rosley Zechariah and Ms Renu Zechariah ('Messrs RZ'); and (b) Messrs Isharidah Ho Chong & Menon and Mr Prakash Menon ('Messrs IHCM') from continuing to represent the defendants in these proceedings.

[3] The application arises in the context of a larger dispute involving the plaintiff, RHB Trustees Bhd, acts as trustee of the Linggiu Valley Orang Asli (Jakuns) Trust and the second defendant was the former receiver and manager ('R&M') of the trust. The first defendant was the corporate vehicle through which the second defendant performed his R&M duties. The second defendant's court ordered appointment as R&M of the trust came to an end on 15 March 2019 when the court ordered the plaintiff to take over as trustee as at 16 March 2019.

[4] The claims in this case, amongst others, involve alleged wrongful payments totaling approximately RM3m made to these law firms which the plaintiff seeks to recuse from acting as solicitors for the defendants. These payments are alleged to breach fiduciary duties owed to the trust and the earlier court order of the appointment. The plaintiffs pleaded that the breach of the fiduciary duties included having made the said payments to themselves and to the solicitors and counsels.

[5] Not to ignore the importance of brevity but the allegations pleaded by the plaintiff are reproduced herein for clearer and easier reference. It is noted that the solicitors and counsels are the ones whom the plaintiff seeks a recusal order. The plaintiff's statement of claim ('SOC') pleaded its claims that the defendants:

(a) failed to consider or sufficiently consider whether the amounts paid to the solicitors and counsels for their respective scope of work were justified and/or reasonable;

(b) failed to make any attempt or any reasonable attempt to negotiate a fair and/or reasonable fee with the solicitors and/or counsels for their respective scope of work; and

(c) did not obtain fee quotes and/or agree on legal fees prior to the appointment of the solicitors and/or counsels.

[6] The solicitors and counsels are Prakash Menon of Messrs Isharidah Ho Chong & Menon ('IHCM') and Renu Zechariah of Messrs Rosley Zechariah.

A They represent and are acting for the first and second defendants respectively in these proceedings defending the plaintiff's claim.

[7] This application essentially seeks to remove both law firms and counsels from representing the defendants due to their direct involvement in the disputed transactions and potential conflicts of interest that would compromise their professional independence and the administration of justice. The key salient facts relied upon by the plaintiff for recusal of the law firms and counsels in summary are as follows:

C (a) trust fund payments: the plaintiff alleges wrongful payments were made by the defendants to the two law firms:

(i) RM694,198.20 to IHCM; and

(ii) RM2,261,553.46 to RZ.

D (b) conflict of interest: both law firms are recipients of the trust monies which form the subject matter of this suit. The lawyers' professional conduct and independence would be compromised as their own payments are being questioned. There is a clear pecuniary interest in the E outcome of the case;

(c) witness issues: counsels Prakash Menon and Renu Zechariah are potential material witnesses. They will likely be called to testify about the payments. This creates a conflict as they cannot act as both advocates and witnesses; F

(d) previous involvement: the lawyers have been specifically named in the BPA (independent auditor's) report findings. Their firms were involved in previous related proceedings about these trust matters. This creates issues of professional independence and potential evidence suppression; G

(e) professional rules violations: the several Legal Profession (Practice and Etiquette) Rules 1978 ('the Rules') that are allegedly violated include:

(i) r 2: special circumstances justifying refusal of briefs;

H (ii) r 3: prohibition on accepting briefs where lawyer would be embarrassed;

(iii) r 4: prohibition where professional conduct likely to be impugned;

(iv) r 5: independence issues; and

I (v) rr 27 and 28: pecuniary interest and witness issues.

(f) prior attempts at resolution: The plaintiff had requested vide letters of 23 August 2024 the lawyers to recuse themselves. Both firms rejected the request in their responses dated 26 August 2024.

[8] The second defendant's opposite stance to the plaintiffs that the payments made to the two law firms were fair and reasonable can be seen vide his affidavit to strike out the plaintiff's suit. Though it is noted that he had yet to file his defence. That clearly crystalises the fact that it is a triable issue before this court in these proceedings of whether the payments to the two law firms were indeed fair and reasonable.

[9] There is also the issue of indemnity of the defendants. The second defendant did not take the position that he would not seek an indemnity from their lawyers. In the event that the plaintiff succeeds its claim before this court, there is a possibility and a probability for the defendants to seek indemnity by the two law firms for their losses.

THIS COURT'S ANALYSIS

[10] This court finds several compelling grounds that warrant recusal in this case. Above all, the undeniable direct pecuniary interests of the two law firms and the two counsels. Both counsels attested in their arguments that the two law firms are the recipients of the disputed trust payments. Thus, they clearly stand to be directly affected by the outcome of these proceedings. Their interests align with defending the very payments under challenge.

[11] Rule 27 specifically prohibits an advocate and solicitor from appearing in any matter where they have a direct pecuniary interest. As emphasised by the Federal Court in *Vijayalakshmi Devi Nadchatiram v Saraswathy Devi Nadchatiram* [2000] MLJU 838; [2000] 4 CLJ 870, any interest that could be converted into money falls within the category of pecuniary interest. The facts in that case disclosed the ground of recusal was the clients being personal relations of the lawyer. In affirming that it would cause embarrassment and that the circumstance attracted a conflict having fallen into the category of pecuniary interest, the Federal Court was directive in its ruling as to the approach the courts must take when faced with such recusal applications. It is to ask the relevant question of the purpose for rr 3 and 27(a), both reproduced herein for easy reference:

> Rule 3 Advocate and solicitor not to accept brief if embarrassed.
>
> (a) An advocate and solicitor shall not accept a brief if he is or would be embarrassed.
>
> (b) An embarrassment arises —
>
> (i) where the advocate and solicitor finds he is in possession of confidential information as a result of having preciously advised another person in regard to the same matter;
>
> (ii) where there is some personal relationship between him and a party or a witness in the proceedings.

Rule 27 Advocate and solicitor not to appear where pecuniarily interested.

(a) An advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested.

(b) This rule does not apply to the case of an advocate and solicitor appearing himself to tax his own costs.

[12] The learned counsel for the plaintiff had referred this court to why the Federal Court in that case ruled on the provision at p 880 (CLJ) of its judgment:

> The objective of the provision lies in the fact that the Bar had set a high standard of practice. The Bar requires that an advocate and solicitor must be able to give an objective and independent judgment before he embarks on the task of advising the client. Thus the advocate and solicitor would not be in a position to do so if he is bound by ties of personal relationship to his client and tied by pecuniary interest. The mischief to be cured and the intention of the rules are too clear to be ignored. The provision are too clear to admit of any doubt or dispute. They had been so framed to preserve the integrity of the advocate and solicitor so that he may not be in conflict of interest and by the same token ensures that when he acts for a client he is independent and free vis a vis both when representing the client and performing his duty as an officer of the court in which he appeared.
>
> In this regard we would apply the decision of *Black v Taylor* [1993] 3 NZLR 403 where the Court of Appeal in New Zealand held that 'the court may prevent a barrister acting as counsel in a matter which he had a conflict of interest, or in which he appeared to have a conflict of interest such that justice would not be seen to be done'.

[13] This court agrees and accepts the plaintiff's submissions that disqualification is not dependent on a finding of culpable conduct, nor is it imposed as a punishment for misconduct. Rather, it is to protect the parties and the administration of justice.

[14] The lawyers' (both the two law firms and also the counsels) pecuniary interest here is not merely speculative but direct and substantial. As held by the Court of Appeal in *Mirza Mohamed Tariq Beg bin Mirza HH Beg v Margaret Low Saw Lui & Ors* [2009] 4 MLJ 671; [2009] 4 CLJ 303 at para 24:

> ... a strong case must be made out before preventing counsel from acting in a particular case on the ground of conflict of interest.

[15] Here, the strength of the case is evident by the following:

(a) both law firms are direct recipients of the disputed trust payments;

(b) the payments form a central part of the claim;

(c) the firms' entitlement to these fees and the reasonableness of their

quantum are disputed and are triable issues in this case; and

(d) the potential liability for return of these payments creates a clear pecuniary interest.

[16] The outcome of this case has direct bearing on the pecuniary interests of the two law firms and in turn the two counsels. Thus, this court is of the considered view that they all accumulatively create a clear pecuniary interest under r 27 of the rules.

[17] On the issue of the two counsels or representatives from the two law firms being potential witnesses at trial, this court is persuaded to find that the lawyers will likely be material witnesses regarding the disputed payments. They possess first-hand knowledge of the fee arrangements, the justification for the payments and the circumstances surrounding these payments which are central to the triable issues. The lawyers will inevitably be material witnesses regarding the disputed payments and their evidence would be essential to determine whether the payments were proper and justified. The dual role as advocates (for the two counsels) and solicitors (for the two law firms) and witnesses would compromise the integrity of the proceedings.

[18] Of course, at the end of the day, the choice of whom to call as witnesses is entirely the defendants'. However in seriously considering this recusal application by the plaintiff, this court has satisfied on balance, that the two counsels and their respective law firm are material to the defendants. The defendant would be deprived of their rights to the services of their respective counsels in that situation.

[19] Rule 28 prohibits lawyers from acting where they may be witnesses on material facts. The application of r 28 in this instant is supported by *Wong Sin Chong & Anor v Bhagwan Singh & Anor* [1993] 3 MLJ 679 at p 680; [1993] 4 CLJ 345 at p 350 where the Supreme Court held:

> ... It was for the respondents to satisfy the court, on balance, of the materiality of the evidence of the appellants' counsel as their witness before the appellants could be deprived of their rights to the services of their counsel.

[20] This court is satisfied that their dual roles as advocates and potential witnesses would not serve the administration of justice. This point goes hand in hand with the professional independence that they must accord not to just their clients who are both the defendants, but also to this court.

[21] The questions of their professional independence are apparent as they must defend their own fee arrangements and professional conduct. They would

be required to justify payments made to themselves. All these create an untenable position where their personal interests are directly implicated. This court finds that the requirement for professional independence under rr 4 and 5 cannot be maintained. The principles in *Black v Taylor* [1993] 3 NZLR 403 are followed, which was cited with approval in *Vijayalakshmi Devi Nadchatiram* as above.

[22] This court further finds that there arises a conflict of interest on the part of the two firms and the two counsel. The two counsels relied on the decision by the Court of Appeal in *Quah Poh Keat & Ors v Ranjit Singh a/l Taram Singh* [2009] 4 MLJ 293; [2009] 4 CLJ 316 that emphasised at p 301 (MLJ); p 325 (CLJ) that:

> Rule 28(a) of the Rules did not envisage ipso facto that an advocate and solicitor is disqualified from appearing in court if called as a witness. For a restriction to arise there must arise first the likelihood of him being called as a witness of any material or disputed facts.

[23] Here, the conflict is not merely theoretical but substantial. Both the law firms of which the counsels are part of, may face claims for recovery of the payments. They have a direct interest in defending the payments' propriety. Their position as both at advocate and potential defendants creates an irreconcilable conflict. The administration of justice requires avoiding such manifest conflicts.

[24] In arriving at my decision to allow the plaintiff's recusal application, the defendants' arguments did not go without consideration. This court took into account the defendants' arguments that:

(a) the claims are speculative;

(b) no specific confidential information has been identified; and

(c) the lawyers' knowledge is not material are not persuasive given the direct involvement of these firms in the disputed transactions.

[25] All those arguments put forth by the defendants are addressed above. This court finds it particularly significant that:

(a) the payments to these firms form a central part of the claim;

(b) the amounts involved are substantial (approximately RM3m);

(c) the firms' conduct and the propriety of their fees are directly in issue; and

(d) they may face potential liability for recovery of the payments.

[26] Additionally, the defendants' arguments that they are entitled to appoint lawyers of their choice in these proceedings cannot be an absolute right. The right to counsel is not absolute and must give way in appropriate situations and circumstances. It cannot override the principles of fairness and justice. It cannot take precedence over the broader interests of the administration of justice. This court is bound by the Court of Appeal's ruling in *Ng Yee Hong v Malaysian Institute of Accountants* [2021] 1 MLJ 584.

[27] As highlighted by the learned counsel for the plaintiff, the Federal Court in *Dato' Sri Mohd Najib bin Hj Abd Razak v Public Prosecutor and other appeals (No 4)* [2022] 5 MLJ 159 at p 165 held:

> In the context of this case, we accept unreservedly the notion that the right to a fair trial is part and parcel of the right to life and personal liberty guaranteed by art 5(1) of the Federal Constitution. See: *Yahya Hussein Mohsen Abdullah v Public Prosecutor* [2021] 5 MLJ 811. The right of the accused to meaningful legal representation by counsel of his choosing is another important component of the right to a fair trial. This much is also apparent from art 5(3) of the Federal Constitution but we hasten to add that this right is not absolute.

CONCLUSION

[28] Having considered the authorities this court is satisfied that this is such case that the right to counsel of choice which is not absolute, has to give way to the overarching principles of fairness and justice. The combination of:

(a) direct pecuniary interest in the subject matter;

(b) likelihood of being material witnesses;

(c) compromised professional independence; and

(d) clear conflict of interest,

makes it impossible for these lawyers (the two law firms and the two counsels) to continue representing the defendants while maintaining the integrity of the judicial process.

[29] This court is cognisant of its duty to maintain the highest standards of the administration of justice while balancing the right of litigants to be represented by counsel of their choice. The unique circumstances of this case present a compelling situation where the lawyers' positions are so inextricably linked to the subject matter of the dispute that their continued representation would compromise the integrity of the judicial process. The combination of their direct pecuniary interest in the disputed payments, their likely role as material witnesses, and the clear conflict between their personal interests and professional duties, all create, an untenable situation that cannot be reconciled with the fundamental principles governing the conduct of litigation.

[30] The proper administration of justice requires that these proceedings be conducted by counsel who can maintain complete professional independence and objectivity. Following the guidance of the Court of Appeal in *Mirza Mohamed Tariq Beg bin Mirza HH Beg* this court is satisfied that a sufficiently strong case has been made out to warrant the disqualification of both law firms and both the counsels.

[31] Accordingly, the plaintiff's application for recusal of the lawyers (ICHM and RZ, Prakash Menon and Renu Zechariah) from acting for the defendants in these proceedings, is allowed. The learned counsels for the plaintiff graciously did not seek costs. No costs is awarded for this application.

Application allowed.

Reported by K Selvaraju